only knows that he is liable but also knows the extent of his liability and in such a case if he keeps the plaintiff waiting for his money, the court awards interest, as was said by Devlin J. in *Kemp* v. *Tolland*,[2] "on the simple commercial basis that if the money had been paid at the appropriate commercial time, the other side would have had the use of it". But in a running-down case unless and until the question of liability and the quantum of damages are settled by the court, there can be no question of withholding the plaintiff's money. And if there is a delay of 12 to 18 months or more between the commencement and the determination of the action, there is no reason why the insurance company should be penalised for a delay for which it is not responsible.

In my opinion, on principle, torts affecting the person do not require the award of interest in the damages. This view is supported by the learned author of *Mayne and McGregor* on Damages, 12th edition, who states, at page 275:—

"Torts affecting the person are in the nature of things not likely to require the award of interest in the damages. The rationale behind the awarding of interest as damages is that the plaintiff has not been given in contract, and has been deprived of in tort, a capital asset upon which he could earn interest. Thus the question of awarding interest can never arise where the damages awarded are for a non-pecuniary loss, and torts affecting the person form the home ground of recovery for non-pecuniary loss, whether pain and suffering, injury to feelings, injury to reputation. For all such damage no interest will be awarded. As to pecuniary loss, in so far as it constitutes prospective loss, which will generally form the main pecuniary loss, there should again be no award of interest on the damages, since the plaintiff could not have earned interest upon money or other remuneration which ex hypothesi he would not yet have acquired at the time of the action. The principal example of such a loss is the loss of impairment of earning capacity in cases of personal injury. A person's earning power can no doubt be regarded as a capital assets, but it is a capital asset relating, as it were, only to the future."

The learned author goes on to state that the position, in theory, is different in respect of a pecuniary loss which has already accrued at the time of the judgment, such as wages or salary which the plaintiff would have earned between the time of the accident and the time of the judgment or expenses already incurred such as medical expenses. It seems to me that, generally speaking, these sums are likely to be small and the interest involved would also be correspondingly small. But even here, it cannot be contended that the plaintiff has been kept out of his money, because the defendant cannot be said to be liable to pay compensation until the court so decides.

Although section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934, became law in England over 30 years ago, there is not a single reported decision in which interest has been awarded in pursuance of that section on damages in a running down case. Nor for that matter has interest ever been awarded in such cases in Singapore although section 8 of the Civil Law Ordinance which was added by Ordinance 30 of 1940 came into force as far back as the 5th July, 1940.

For these reasons I am of the view that, there should be no award of interest under section 8 of the Civil Law Ordinance on damages awarded in running-down cases. The plaintiff's claim for interest on the amount awarded as damages in this case is accordingly dismissed.

Claim for interest dismissed.

Solicitors: *Murphy & Dunbar; Abishega-Naden & Co.*

TAY GEOK YAP & ANOR. v. COMMISSIONER OF STAMPS, SINGAPORE

[O.C.J. (Chua J.) May 30, 1966]

[Singapore — Special Case No. 1 of 1965]

Stamps — Ad valorem duty — Whether deed of agreement is a conveyance, assignment or transfer on sale of property — Meaning of "property" — Stamp Ordinance (Cap. 170), ss. 25(a) and 39.

In this case on the death of a deceased person letters of administration had been granted to the deceased's principal wife and his son. Subsequently a claim was made by one Tan Lian Cheow as one of the lawful widows of the deceased. The High Court found that she was the lawful widow and ordered letters of administration to be granted to her together with the other widow and the son. An appeal to the Federal Court was dismissed and conditional leave was given to appeal to the Privy Council. Subsequently the parties entered into a deed of agreement whereby the said Tan Lian Chew was in effect to receive $220,000 in consideration of renouncing all her rights and claim to the estate. The said deed was presented for assessment of stamp duty and the Commissioner of Stamps certified that it was chargeable with *ad valorem* duty of $4,400. The appellants were dissatisfied with the said assessment and appealed to the court against the assessment.

Held: the deed of agreement was a conveyance on sale of property within the meaning of the Stamp Ordinance in that it was intended to implement an agreement of sale of property and therefore attracted *ad valorem* duty.

Cases referred to:—

(1) *Potter* v. *Commissioners of Inland Revenue* 156 E.R. 392 at p. 396.

(2) *Oughtred* v. *Commissioners of Inland Revenue* [1960] A.C. 206.

SPECIAL CASE STATED.

M. Karthigesu for the appellant.

Amarjit Singh Verick (Legal Officer) for the respondent.

Cur. Adv. Vult.

Chua J.: This is a case stated by the Commissioner of Stamps under section 39 of the Stamp Ordinance (Cap. 170) (to which I will

hereinafter refer to as "the Ordinance") asking for the opinion of the court as to the amount of stamp duty payable on a certain deed of agreement.

The facts are shortly these. Lee Gee Chong (hereinafter called "the deceased") died in Singapore on the 25th April, 1960, intestate. Grant of letters of administration to the estate of the deceased was made to Tay Geok Yap, the deceased's principal wife, and to Lee Boon Leong, the deceased's son. On the 13th October, 1961, Tan Lian Cheow, claiming to be one of the lawful widows of the deceased, moved the High Court to revoke the grant of letters of administration and as a result of this application the matter proceeded as an action. On the 10th December, 1963, the High Court declared that Tan Lian Cheow was a lawful widow of the deceased and ordered that letters of administration be granted to Tay Geok Yap, Lee Boon Leong and Tan Lian Cheow. Tay Geok Yap and Lee Boon Leong appealed to the Federal Court against the judgment of the High Court. On the 22nd October, 1964, the Federal Court dismissed the appeal. By an order of the Federal Court dated the 7th December, 1964, Tay Geok Yap and Lee Boon Leong were given conditional leave to appeal to the Privy Council against the judgment of the Federal Court. By a deed of agreement (to which I will hereinafter refer to as "the said deed") made on the 2nd March, 1965, between Tay Geok Yap and Lee Boon Leong of the one part and Tan Lian Cheow of the other part, the parties agreed that in consideration of Tay Geok Yap and Lee Boon Leong (a) paying to Tan Lian Cheow the sum of $220,000 and (b) undertaking not to prosecute any appeal to the Privy Council against the judgment of the Federal Court and (c) agreeing to pay all legal costs and the taxes (if any) in regard to the said sum of $220,000, Tan Lian Cheow renounced (i) all her rights as an administratrix of the estate of the deceased and (ii) declared that she had no further claims, rights, titles or interests whatsoever in the estate of the deceased. On the 3rd March, 1965, the said deed was presented by Tay Geok Yap and Lee Boon Leong (hereinafter referred to as the appellants) to the Commissioner of Stamps for the assessment of the stamp duty with which the said deed was chargeable. The Commissioner certified that the said deed was chargeable with duty of $4,400. The appellants were dissatisfied with the assessment and appealed to the court against the assessment.

The Commissioner of Stamps contends that the said deed falls within the head of charge "conveyance, assignment or transfer on sale of any property" under Item 25(a) of Schedule A of the Ordinance and that accordingly the said deed was liable to *ad valorem* duty in the sum of $4,400.

The appellants contend that the said deed is a deed of a kind not described in Schedule A of the Ordinance and as such the said deed is chargeable with stamp duty of $5 under Article 31 of Schedule A of the Ordinance.

Item 25(a) of Schedule A of the Ordinance imposes an *ad valorem* duty on "conveyance, assignment or transfer on sale of any property" not being stocks and marketable securities in companies.

In the Ordinance "conveyance on sale" has a very wide meaning; it includes every instrument and every decree or order of any court, whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser or any other person on his behalf or by his direction (section 2).

The main question in this case is whether the said deed is a "conveyance on sale" within the meaning of the Ordinance.

To come within the definition of "conveyance on sale" the conveyance must be of "property" and there was a sale of the property.

There is no definition of "property" in the Ordinance but the best known definition, the one quoted by the learned authors on Stamp Law, is the one given to it by Pollock C.B. in the case of *Potter* v. *Commisioners of Inland Revenue.* [1] Property is "that which belonged to a person exclusive of others, and which could be the subject of bargain and sale to another."

Learned counsel for the appellants submits that the said deed does not deal with property or any estate or interest in property. The contention of learned counsel for the appellants is shortly this. What had Tan Lian Cheow got? She had (1) the right to be an administratrix of the estate of the deceased and (2) the right to a share in the estate of the deceased. But at the time when the deed was executed these rights were not undisputed rights, they were still being disputed by the appellants who had taken steps to appeal to the Privy Counsel, and consequently these rights did not belong to Tan Lian Cheow "exclusive of others and which could be the subject of bargain and sale" to the appellants. The position would be different if Tan Lian Cheow had been successful in the Privy Council and the appellants wanted to buy her out in which case she would have property to sell.

Learned counsel for the appellants further submits that, even if the deed dealt with property, there had been no sale of the property and nothing had been vested or transferred. The contention of learned counsel for the appellants is this. All that Tan Lian Cheow had done was to renounce her rights as an administratrix of the estate of the deceased and to declare that she had no further claims, rights, titles or

interests whatsoever in the estate of the deceased, she had not sold anything.

With all due respect to learned counsel for the appellants, I am unable to agree with his submissions.

Now, what took place after the appellants had lost their appeal in the Federal Court? They negotiated with Tan Lian Cheow and, mark you, they negotiated on the basis that Tan Lian Cheow was a widow of the deceased and entitled to share in the estate of the deceased and that she was an administratrix of the estate of the deceased. The right of Tan Lian Cheow to share in the estate of the deceased was property which could be the subject of bargain and sale. There was no doubt about it that the negotiation resulted in Tan Lian Cheow selling her share in the estate. What else could the $220,000 be for except for her share in the estate? If that was not the case it is rather a surprising thing that Tan Lian Cheow should have been paid so large a sum of money for nothing. The true nature and intended purpose of the said deed was to complete the oral sale which took place at the negotiation.

I am of the opinion that an instrument attracts *ad valorem* duty if it is intended by the parties to implement an agreement of sale between them. As Lord Denning said in the case of *Oughtred* v. *Commissioners of Inland Revenue* [2] at p. 233:

> "In my opinion, every conveyance or transfer by which an agreement for sale is implemented is liable to stamp duty on the value of the consideration. It is not necessary for the instrument of implementation to be between the same parties as the agreement for sale, nor for it to relate to the self-same property as the agreement for sale. Suffice it that the instrument is the means by which the parties choose to implement the bargain they have made. It is then a 'conveyance or transfer on sale' of any property — which I take to mean a conveyance or transfer consequent upon the sale of any property and in implementation of it."

For these reasons I am of the opinion that the said deed is a "conveyance on sale of property" within the meaning of the Ordinance. The result is that, in my opinion, the conclusion arrived at by the Commissioner of Stamps was sound and that this appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Allen & Gledhill.*

CHUA YEW PHONG v. A. S. YEO; EDWARD LUMLEY & SONS (M) LTD. — 3rd PARTY

[O.C.J. (MacIntyre J.) June 6, 1966]

[Ipoh — Civil Suit No. 526 of 1965]

Contract — Insurance — Insurance broker — Whether insurance broker liable under policy of insurance. Advocate and Solicitor — Breach of professional duty — Claim for indemnity by underwriters of policy of insurance — Whether underwriters or insurance brokers — Third party — Application to strike off.

The defendant who had been sued for damages for breach of professional duty served a third party notice on the third party, alleging that they were the underwriters of a policy of insurance whereunder they were liable to indemnify him against damages arising out of the breach of professional duty. The third party thereupon applied for their name to be struck off from the proceedings on the ground that they were not the underwriters but merely a firm of insurance brokers who effected the insurance.

Held: neither in law nor in contract was the third party in this case liable in damages to the defendant under the insurance policy and the third party was therefore entitled to be released from the proceedings.

Cases referred to:—

(1) *Provincial Insurance Co.* v. *Leduc* (1874), L.R. 6 P.C. 224.

(2) *Kensington* v. *Inglis* 8 East 273.

(3) *Lloyds* v. *Harper* (1881), 16 Ch. D. 290 C.A.

(4) *Provincial Insurance Co. Ltd.* v. *Crowder* 27 Ll. L.R. 28.

CIVIL SUIT.

F. C. Arulanandom for the defendant.

Daim Zainuddin for the third party.

Cur. Adv. Vult.

MacIntyre J.: In this action the plaintiff claims $54,000 by way of damages against the defendant for breach of professional duty as a solicitor.

By an order made by me in chambers on the 14th day of February 1966, the defendant was granted leave to issue and serve upon Messrs. Edward Lumley & Sons (Malaya) Ltd. (hereinafter referred to as the third party) a third party notice under O. 16A r. 1 of the Rules of the Supreme Court. This order was made on an application supported by an affidavit dated the 11th of January 1966 in which the defendant had averred that the third party were the underwriters of a policy of insurance whereunder they were liable to indemnify him against damages arising out of a breach of professional duty.

The present application is by the third party praying for an order that their name be struck off from these proceedings with costs on the ground that they are not the underwriters of the policy of insurance but merely a firm of insurance brokers who effected the insurance. The affidavit of Hew Futt Chong dated the 2nd of March 1966 refers.

Then by an affidavit dated the 10th of March 1966 the defendant denied that the third party had acted merely as insurance brokers and averred that the third party were the principals or had held themselves as such when the insurance was effected. It was further alleged that